and MONTGOMERY, JJ., dissent). *Carton, President of Constitutional Convention* v. *Secretary of State* (1908), — Mich. —, 14 Det. Leg. News 968. 115 N. W. Rep. 429.

There were six opinions submitted in this case, and three general points of difference are announced in them. GRANT, C. J., supported in part by BLAIR, J., maintains the right of the convention to fix the date of the submission to the people on the ground that a constitutional convention is a sovereign body. Great diversity prevails among the courts and text-writers as to the status of a constitutional convention. One group maintains that such a convention is a sovereign body, accountable only to the people that created it, (*Loomis* v. *Jackson,* 6 W. Va. 613; *Sproule* v. *Fredericks,* 69 Miss. 898; *Franz* v. *Autrey,* 91 Pac. (Okla.) 193). The other that the constitutional convention is a mere committee, created by the people, and possessing only such powers as are expressly or by necessary implication delegated to it. Under this theory, "it is, in general, the right and duty of a legislature to prescribe when, where, and how a convention shall meet and proceed with its business, and put its work in operation," JAMESON, CONST. CONVENTIONS, 4th ed. § 380; *Wood's Appeal,* 75 Pa. St. 59. For further discussion see note, 6 MICH. LAW REV. 70. The other justices, while denying the sovereignty theory of the convention, differ on a matter of construction of certain terms in the existing constitution of Michigan. The minority of the court hold that no provision is made in the existing constitution for the time of submitting a revision to the people, and so conclude that it was left to the legislature to determine. The majority of the court, however, hold that the provision in the existing constitution that amendments shall be submitted at the next general election, applies to a revision of the constitution. The "next general election" means the November elections, and not those occurring in the Spring. *Westinghausen* v. *People,* 44 Mich. 265. Therefore, as the existing constitution provides that the revision shall be submitted at the "next general election," the legislature does not possess the power to change the date.

CRIMINAL LAW—CAPITAL OFFENSE—BAIL—WHEN GRANTED.—The petitioners were charged with murder. Upon their preliminary examination bail was refused, and they were confined in jail to await trial. Thereupon, they sued out a writ of habeas corpus alleging that they were illegally confined in that the proof of guilt was not evident, nor the presumption thereof great. *Held,* that, "if after hearing the whole evidence introduced on the application for bail, it is insufficient to generate in the mind of the court a reasonable doubt whether the accused committed the act charged, and in doing so they were guilty of a capital offense, bail should be refused." *In re Thomas et al.* (1908), — Okla. —, 93 Pac. Rep. 980.

The constitutions of most states contain substantially the same provision respecting bail that is found in § 17, art. 2 of the Bill of Rights of Oklahoma, to-wit: "All persons shall be bailable by sufficient sureties, except for capital offenses when the proof of guilt is evident, or the presumption thereof is great." In consequence, courts of many states have been called

upon to lay down a rule by which to determine when "proof of guilt is evident or the presumption thereof is great." A few early cases held that the fact that an indictment had been brought against the accused was conclusive that proof was evident or presumption great. *Territory* v. *Benoit,* 1 Mart. (La.) 142; *People* v. *Tinder,* 19 Cal. 539. But such a rule is not generally recognized today. *Ex parte White,* 9 Ark. 222; *Lynch* v. *People,* 38 Ill. 494; *Ex parte Kendall,* 100 Ind. 599; *State* v. *Hill.* 1 Tread (S. C.) 242. Beginning with *Com.* v. *Keeper of the Prison,* 2 Ashm. (Pa.) 227, it was held, construing the words in question, that bail should be refused where the judge would sustain a capital conviction, pronounced by a jury, on evidence of guilt such as that exhibited on the application for bail and that bail should be allowed where the prosecutor's evidence was of less efficacy. This rule, known as the Pennsylvania rule, has been approved often and is still probably the one most generally followed. *Thrasher* v. *State,* 26 Fla. 526, 7 S. 847; *Ex parte Richardson,* 96 Ala. 110, 11 S. 316; *Matter of Trioa,* 64 Cal. 152, 28 P. 231; *Ex parte Foster,* 5 Tex. App. 625, 32 Am. Rep. 577; *Street* v. *State,* 43 Miss. 1; *State* v. *Crocker,* 5 Wyo. 385, 40 P. 681; *State* v. *Summons,* 19 Oh. 139; *Ex parte Claunch,* 71 Mo. 233. But it has not escaped severe criticism. In *Ex parte Tom Smith, Jr.,* 23 Tex. App. 100, 5 S. W. 99, the Texas Court of Appeals refused to follow the Pennsylvania rule and overruled *Ex parte Foster* (supra). The Supreme Court of Mississippi in *Ex parte Bridewell,* 57 Miss. 39, criticises the rule and refuses to approve Street v. *State,* (supra). Other courts have not always followed the rule consistently. *Ex parte Walpole,* 85 Cal. 362, 24 P. 657. See also *Ex parte McAnally,* 53 Ala. 495, 25 Am. Rep. 646. Some courts seem to regard the words "proof evident or presumption great" as in themselves sufficiently clear to serve as a guide. *In re Malison,* 36 Kan. 725, 14 P. 144; *Ex parte Walton,* 79 Ind. 600; *Ullery* v. *Com.,* 8 B. Mon. (Ky.) 3; *McCoy* v. *State,* 25 Tex. 33. In the principal case it is maintained that the Pennsylvania rule is not sufficiently mindful of the rights of the accused and that the words "proof evident or presumption great" are too general to be useful as a guide in weighing the evidence when the liberty of the citizen is in the balance. Consequently, the rule is laid down as stated in the statement of the principal case (supra). *Ex parte Bridewell,* 57 Miss. 39; *Ex parte Tom Smith, Jr.,* 23 Tex. App. 100, 5 S. W. 99; *Ex parte Wray,* 30 Miss. 673; *In re Losasso,* 15 Colo, 163, 24 P. 1080, 10 L. R. A. 847. See also *Ex parte McAnally,* 53 Ala. 495, 25 Am. Rep. 646, which has been cited as an authority in favor of both the Pennsylvania rule and the rule laid down in the principal case.

CRIMINAL LAW—MURDER—ELEMENTS OF MURDER.—A requested instruction that one of the ingredients of murder in the second degree is wilfulness and malice aforethought, and unless the jury believe that deceased came to his death by blows inflicted upon him by defendant intentionally and with malice aforethought, they cannot find him guilty of murder in the second degree was *held,* to be misleading for the use of the word "aforethought" as applied to murder in the second degree, and hence to have been properly refused. *Smith* v. *State* (1908), — Ala. —, 45 So. Rep. 626.